



U.S. Department of Justice

Immigration and Naturalization Service

T

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



Public Copy

JAN 10 2000

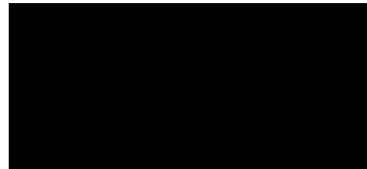
File: EAC-98-043-51023 Office: Vermont Service Center Date:

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), in order to employ her as a lay evangelist. The director denied the petition finding that the petitioner failed to establish that the position offered constituted a qualifying religious occupation, that the beneficiary had satisfied the requirement of having been engaged in a religious occupation for at least the two years preceding the filing date of the petition, or that the church had the ability to pay the proffered wage.

On appeal, counsel for the petitioner submitted a statement from an official of the church responding to the issues raised in the decision.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner is an independent church claiming three employees

and 1997 gross revenues of approximately \$105,000. The beneficiary is described as a forty-year-old native and citizen of Jamaica who last entered the United States on January 19, 1995, as a B-2 visitor. The record reflects that she remained beyond her authorized stay in an unlawful status. The petitioner claimed that it has and will continue to employ the beneficiary as a lay evangelist at a salary of \$200 per week, or \$10,400 per year.

The first issue in the director's decision is whether the position offered constitutes a qualifying religious occupation.

8 C.F.R. 204.5(m) (2) states, in pertinent part, that:

*Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

In order to establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The regulatory definition is framed in broad terms. It states only that the position must be related to a traditional religious function and provides a brief list of examples. The term "traditional religious function" is not defined. This serves to accommodate all religious organizations and their respective traditions of various vocations and occupations. In making a determination regarding special immigrant classification, the Service must distinguish between activities that are traditionally performed by volunteer members of the congregation, as part of the practice of their religious beliefs, and activities that are traditionally performed by specialized lay personnel, as a salaried occupation.

The list of examples in the regulation further reflects that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In this case, the duties of the position were described, in pertinent part, as assisting the pastor with worship services, performing street evangelism, visiting the sick and shut-ins, counseling youth and new members, and conducting bible study groups.

On review, merely stating that a person will be employed under a given job title or will perform certain duties is not sufficient to meet the burden of proof. In this case, the petitioner did not furnish a detailed description of its organization, the size of its congregation, or the structure of its outreach programs. Absent a comprehensive description of the proposed position within the organization, the Service is unable to conclude that the position is qualifying as a religious occupation. The petitioner asserted that it has employed the beneficiary in this capacity for more than two years. The petitioner, however, furnished no evidence, such as certified tax records, to support this claim. The petitioner asserted that the beneficiary has taken courses at a Bible college. However, the petitioner did not establish that the position is regulated by the governing body of the denomination or that it requires specific prescribed religious training. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The proposed position in this matter is essentially a lay pastoral assistant. Such positions that utilize members of the congregation to perform services on behalf of the church are common to many religious organizations. The positions are often performed on a part-time voluntary basis. These positions do not rise to the level of a religious occupation as contemplated under the Act. The petitioner in this case has failed to establish that the position requires specific prescribed religious training or theological education or that it is a position recognized and regulated by the governing body of the denomination. Nor has the petitioner shown that this is traditionally a permanent full-time salaried occupation in its organization. Accordingly, it must be concluded that the petitioner has failed to establish that the proposed position is qualifying as a religious occupation within the meaning of section 101(a)(27)(C) of the Act.

The next issue raised by the director is whether the petitioner has established that the beneficiary has had the requisite two years of

continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on November 24, 1997. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious occupation for at least the two years from November 24, 1995 to November 24, 1997.

In the job-offer letter, an official of the petitioner stated that the beneficiary has been employed in the proffered position since April 1995.

As noted above, the petitioner failed to submit evidence that it has, in fact, continuously employed the beneficiary for the requisite period. The record contains no proof of the beneficiary's means of financial support. Therefore, the Service is unable to determine that the beneficiary had been engaged in any particular occupation, religious or otherwise, for the two-year period. Furthermore, as noted above, even if the alleged employment were established as fact, the record does not establish that the duties of the position would constitute engaging in a qualifying religious occupation. Therefore, the petitioner has failed to establish that the beneficiary had had two years of qualifying experience in a religious occupation from at least November 1995 to November 1997.

The final issue in the director's decision is the prospective employer's ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The director found that the accountant's compilation submitted into evidence was insufficient to satisfy the above requirement. On appeal, the church official argued that the report accurately reflects the church's financial status. The compilation report,

however, does not satisfy the regulatory requirement. The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. Therefore, the director's objection on this issue has not been overcome.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.